

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

FILED

PETITION TO AMEND THE MISSISSIPPI
CODE OF JUDICIAL CONDUCT

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COURT OF APPEALS

PETITION TO AMEND THE
CODE OF JUDICIAL CONDUCT

Pursuant to Rule 27(f) of the Mississippi Rules of Appellate Procedure, I respectfully petition the Mississippi Supreme Court to amend Canon 5F of the Mississippi Code of Judicial Conduct. To support the amendment, I submit the following:

1. On April 4, 2002, the Mississippi Supreme Court adopted the Code of Judicial Conduct.
2. Canon 5F, titled "Special Committee--Proceedings and Authority," creates a Special Committee on Judicial Election Campaign Intervention (the "Special Committee"). The Special Committee's "responsibility shall be to issue advisory opinions and to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office." Rule 5F(3) includes the procedure for handling complaints filed.
3. On January 4, 2016, I qualified as a candidate for the election of Supreme Court Justice, District 1, Place 3. By letter dated February 9, 2016, the Executive Director of the Commission on Judicial Performance sent me a letter regarding the "2016 Judicial Election Candidates." This letter included the Final Report of the 2002 Special Committee Judicial Campaign Intervention. The first page of Appendix II of this Report, included a statement dated November 5, 2002, signed by Fred L. Banks, Jr., as Chair, and

2016-1224

it discussed the Special Committee's action against my 2002 campaign for the Mississippi Court of Appeals. The second page is the press release that was issued by the Special Committee. The relevant pages are attached as Exhibit "A".

4. In 2002, as the candidate subject to the complaint, I did not receive notice of the charge that was filed against my campaign or an opportunity to be heard to defend against the charge. Instead, I learned of the Special Committee's 2002 action on the afternoon of election day 2002, when a reporter asked for comment about the press release. I later learned that the complaint had been filed with the Special Committee the week prior to the election. With sufficient time to provide notice of the charge, the Special Committee took action without notice or giving me an opportunity to be heard. The Special Committee considered, rendered a decision and released the press release based solely on the charges made.

5. Canon 5F creates the Special Committee and gives it extraordinary powers over judicial elections. However, Canon 5F does not require the Special Committee provide the subject of the complaint with basic due process protections, i.e. notice or an opportunity to be heard. The absence of such protections violate basic notions of fairness and due process.

6. The Comment to Canon 5F indicates that it was drafted by the Mississippi Supreme Court based on similar rules in South Dakota and Georgia. The Comment reads:

This Section 5F does not appear in the ABA Model Code and was added with the adoption of this Section 5. *Similar provisions have been adopted*

for South Dakota and Georgia. See South Dakota Rules of Commission on Judicial Qualifications, Rule IV and Rules of Georgia Judicial Qualification Commission, Rule 27. In *Weaver v. Bonner*, 114 F. Supp. 2d 1337 (N.D. Ga. 2000), a constitutional challenge to the Georgia rule was rejected, the court saying the government may “participate in the marketplace of ideas” and “contribute its own views to those of the other speakers. *Weaver* at 1345, quoting *Muir v. Ala. Educ. Television Comm’n*, 688 F. 2d 1033, 1037 (5th Cir. 1982). In *Weaver*, the court also specifically found the procedures adequate to satisfy due process requirement..

(Emphasis added).

7. However, the similar rules in both South Dakota and Georgia ensure that the “subject of the complaint” receives notice of a complaint and an opportunity to be heard, i.e. due process protections. Mississippi does not.

8. Rule 8 of the “Rules and Operating Procedures [of the] South Dakota Special Committee on Judicial Election Campaign Intervention” (attached as Exhibit “B”) provides that “the subject of the complaint” is to receive immediate notice and an opportunity to be heard.

Rule 8. Complaints.

When the Special Committee receives a complaint or otherwise receives information indicating a violation of the Code of Judicial Conduct they will:

- a) Contact the complainant and/or subject of the complaint and gather such information deemed necessary to act on the complaint.
- b) ***Immediately provide the subject of the complaint notice and an opportunity to respond in a manner specified by the Special Committee.***

c) Conduct any additional investigation the Special Committee deems necessary.

d) The Special Committee shall act on all complaints within five days after receipt. Such response may be either in person, by fax, US mail, e-mail or telephone as the Special Committee determines appropriate.

All proceedings shall be informal and non-adversarial. If the Special Committee determines the complaint does not warrant intervention it shall dismiss the complaint and notify all parties.

(Emphasis added).

9. Rule 27(b)(4) of the Georgia “Code of Judicial Conduct - Rules of the Judicial Qualifications Commission” (attached as Exhibit “C”), provides that the “subject of the complaint” is entitled to receive notice and an opportunity to be heard. Rule 27(b), which is similar to our rule, reads:

(b) Upon receipt of a complaint or otherwise receiving information facially indicating a violation by a judicial candidate of any provision of Canon 7 during the course of a campaign for judicial office, the Director shall immediately forward a copy of the same by facsimile and U.S. Mail to the Special Committee members and said Committee shall:

(1) seek, from the complainant and/or subject of the complaint, such further information on the allegation of the complaint as it deems necessary;

(2) conduct such additional investigations as the Committee may deem necessary;

(3) determine whether the allegations of the complaint warrant speedy intervention; if no intervention is needed, dismiss the complaint and so notify the complaining party;

(4) if further investigation is deemed necessary, request confidential written responses from the subject of the complaint and the complaining party on the following schedule:

(A) within 3 business days of receiving such a request from the Committee, a written response from the subject of the complaint;

(B) the Committee will share the subject's written response with the complaining party on a confidential basis, who shall be requested to provide a written response within 3 business days; and

(C) the Committee will share the complaining party's response with the subject of the complaint, who then shall be requested to submit a written rebuttal within 1 business day.

In the event a complaint is filed within two (2) weeks before a judicial election, or if circumstances otherwise dictate, the Committee may accelerate the above schedule or eliminate the need for steps (B) and (C) as the Committee deems necessary. Each of the above papers must be served on the Committee only, and will be kept confidential except as described above. The identity of the complaining party will remain confidential until the Committee's decision is communicated to the parties unless that confidentiality is waived by the complaining party. Any party breaching the confidentiality of the above process shall be subject to a Public Statement as set forth in this Rule.

(Emphasis added).

10. I respectfully petition the Mississippi Supreme Court to amend Canon 5F of the Code of Judicial Conduct to provide the subject of any complaint with basic fairness and due process protections. Specifically, I ask the Court to amend Canon 5F to read:

CANON 5
A Judge or Judicial Candidate Shall Refrain
From Inappropriate Political Activity

F. Special Committee – Proceedings and Authority. In every year in which an election is held for Supreme Court, Court of Appeals, chancery court, circuit court or county court judge in this state and at such other times as the Supreme Court may deem appropriate, a Special Committee on Judicial Election Campaign Intervention ("Special Committee") shall be created whose responsibility shall be to issue advisory opinions and to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office. . . . The objective of the Special Committee shall be to alleviate unethical and unfair campaign practices in judicial elections, and to that end, the Special Committee shall have the following authority:

. . .

- (3) Upon receipt of information facially indicating a violation by a judicial candidate of any provision of Canon 5 during the course of a campaign for judicial office, or indicating actions by an independent person, committee or organization which are contrary to the limitations placed upon candidates by Canon 5, the Commission staff shall immediately forward a copy of the same by e-mail or facsimile, if available, and U.S. mail to the Special Committee members, and the subject of the complaint, and said Committee shall:
 - (a) seek, from the informing party and/or the subject of the information, such further information on the allegations as it deems necessary;
 - (b) seek a response from the subject of the complaint, and allow the subject of the complaint an opportunity to present any information on the allegations in defense of the accusation that the subject of the complaint would like to provide to the Committee;
 - ~~(b)~~(c) conduct such additional investigation as the Committee may deem necessary;


- (d) conduct a hearing on the accusation, and allow the subject of the complaint or his/her representative appear and defend;
- ~~(d)~~(e) determine whether the allegations warrant speedy intervention and, if so, immediately issue a confidential cease-and-desist request to the candidate and/or organization or independent committee or organization believed to be engaging in unethical and/or unfair campaign practices. If the Committee determines that the unethical and/or unfair campaign practice is of a serious and damaging nature, the Committee may, in its discretion, disregard the issuance of a cease-and-desist request and immediately take action authorized by the provisions of paragraph (3)(d)(I) and (ii), hereafter described. If the allegations of the complaint do not warrant intervention, the Committee shall dismiss the same and so notify the complaining party.
- ~~(d)~~(f) If a cease-and-desist request is disregarded or if the unethical or unfair campaign practices otherwise continue, the Committee is further authorized:
- (i) to immediately release to all appropriate media outlets, as well as the reporting party and the person and/or organization against whom the information is submitted, a public statement setting out the violations believed to exist, or, in the case of independent persons, committees or organizations, the actions by an independent person, committee or organization which are contrary to the limitations placed upon candidates by Canon 5. In the event that the violations or actions have continued after the imposition of the cease and desist request, the media release shall also include a statement that the candidate and/or organization or independent person, committee or organization has failed to honor the cease-and-desist request, and
 - (ii) to refer the matter to the Commission on Judicial Performance or to any other appropriate regulatory or enforcement authority for such action as may be appropriate under the applicable rules.

- (4) All proceedings under this Rule shall be informal and non-adversarial. However, the subject of the complaint shall be provided prompt notice of any accusation. The subject of the complaint or his/her representative shall be allowed to participate in the Special Committee proceedings when the matter is considered. The subject of the complaint must be given reasonable notice and an opportunity to be heard before any action may be taken by the Special Committee. ~~, and~~ The Special Committee shall act on all requests within ten (10) days of receipt, either in person, by facsimile, by U.S. mail, by electronic mail, or by telephone. In any event, the Special Committee shall act as soon as possible taking into consideration the exigencies of the circumstances and, as to requests received during the last ten (10) days of the campaign, shall act within thirty-six (36) hours.
- (5) Except as herein specifically authorized, the proceedings of the Special Committee shall remain confidential, and in no event shall the Special Committee have the authority to institute disciplinary action against any candidate for judicial office, which power is specifically reserved to the Commission on Judicial Performance under applicable rules.

11. Due to the impending judicial elections scheduled for November 2016, and pursuant to Rule 27(f) of the Mississippi Rules of Appellate Procedure, I ask the Supreme Court dispense with publication and comment and deem the urgency of the proposal prohibitive to the delay needed for publication and comment.

WHEREFORE, PREMISES CONSIDERED, I respectfully petition the Mississippi Supreme Court to amend Canon 5F of the Code of Judicial Conduct to require the Special Committee give basic due process to the subject of any complaint.

Respectfully Submitted, this the 17th day of March, 2016.


Kenny Griffis

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Special Committee on Judicial Election Campaign Intervention

In re Complaint regarding Kenny Griffis Campaign flier

This matter is before the committee on a complaint filed with regard to a campaign flyer bearing the legend "Paid for by the Committee to Elect Kenny Griffis and approved by the candidate." The flyer asserts, among other things that "Kenny will fight the special interest groups—like the personal injury lawyers who have created the "lawsuit industry."

The committee has reviewed the flyer and concludes that it violates the Code of Judicial Conduct, Canons 5.A. (3) (d) (i) and (ii). Due to the exigencies of the circumstances immediate action is warranted. Accordingly, the committee directs that the attached press release immediately issue to all media outlets.

Ordered this 5th day of November, 2002.

Special Committee on Judicial Election Campaign
Intervention

By: 

Fred L. Banks, Jr., Chair.

~~Appendix II~~
Exhibit "A"

Special Committee on Judicial Election Campaign Intervention.

Press Release

November 5, 2002

Kenny Griffis, a candidate for the Mississippi Court of Appeals has, in the view of this committee, violated Canon 5.A. (3)(d) (i) and (ii) of the Code of Judicial Conduct by asserting that he will "fight the special interest groups--like the personal injury lawyers who have created the "lawsuit industry." This statement singles out "personal injury lawyers" as those Griffis intends to "fight." The committee views this as a pledge or promise inconsistent with the fair and impartial administration of justice in violation of Canon 5.A. (3)(d)(i)) and appears to commit Griffis on issues likely to come before him should he be elected, in violation of Canon 5.A. (3)(d)(ii).

For Immediate Release

Fred L. Banks, Jr. Chair

Special Committee on Judicial Election Campaign Intervention

RULES AND OPERATING PROCEDURES

South Dakota Special Committee on Judicial Election Campaign Intervention

Rule 1. Purpose of the Special Committee

The Special Committee was created to issue advisory opinions and to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office. The objective of the Special Committee is to alleviate unethical and unfair campaign practices in judicial elections. The Special Committee does not have authority to institute disciplinary actions against a candidate.

Rule 2. Functions of the Special Committee.

The Special Committee shall:

1. Provide judicial candidates with a forum to hear charges of false or unethical campaign practices;
2. Advise whether judicial campaign practices are proper;
3. Render non-binding advisory opinions on questions regarding the South Dakota Code of Judicial Conduct.

Rule 3. Organization.

The Special Committee consists of nine members appointed by the Supreme Court. The Special Committee includes two retired members of the judiciary; three lawyers, with no more than two from one political party; and four citizens who are neither lawyers nor judges, with no more than two from one political party.

The Chair of the Special Committee is appointed by the Supreme Court. The Supreme Court may also designate a Vice-Chair who shall act for the Chair when the Chair is absent or otherwise unable to perform his/her duties.

Rule 4. Notice of Candidacy.

Within ten days after filing their nominating petitions, all candidates, including incumbent judges, shall forward written notice of such candidacy to the Judicial Qualifications Commission. The Judicial Qualifications Commission shall inform the Special Committee of any such candidacies. Upon receipt of such notice, the Special Committee shall forward to such candidates, by certified mail-return receipt requested, the following:

- The Code of Judicial Conduct;
- Supreme Court Rule 05-13;
- Summaries of opinions issued by the Special Committee;
- Summaries of opinions issued by the Supreme Court concerning campaign conduct or practices; and
- An Acknowledgement Form

Each candidate shall promptly return the acknowledgement form to the Special Committee and certify that he/she has read and understands the materials forwarded and agrees to comply with such standards during the course of the campaign.

Failure to comply with this requirement shall authorize the Special Committee to immediately publicize such failure to all candidates in such race, the Judicial Qualifications Commission, the Disciplinary Board of the State Bar Association, and all appropriate media outlets. Appropriate media outlets include the Associated Press, the applicable local county publication(s) where legal notices are designated, or any other media the Special Committee deems appropriate under the circumstances.

Rule 5. Receipt of Inquiries or Complaints.

All inquiries or complaints to the Special Committee concerning campaign conduct should be forwarded to the following address:

Special Committee on Judicial Election Campaign Intervention
c/o Suzanne Kappes
State Court Administrator's Office
500 East Capitol Avenue
Pierre, SD 57501
Phone: 605 773-4874
Fax: 605-773-5627
E-mail: Suzanne.Starr-Kappes@ujs.state.sd.us

All requests for advisory opinions shall be in writing, including e-mail or fax, and should specifically state the question and factual information surrounding the request.

All complaints directed to the Special Committee shall be in writing and signed by the complainant. Complaints submitted via fax or email will be accepted but not acknowledged until the original signed complaint has been received. Unsigned or anonymous complaints will not be accepted. A complaint form has been prepared and is available for use by persons who wish to file complaints with the Special Committee.

When a complaint or request for an advisory opinion requires the Special Committee to review campaign materials, duplicate originals of the campaign materials shall be forwarded with the complaint or request.

Requests for advisory opinions or complaints may be received from the candidate, the candidate's campaign committee, or the public. Additionally, the Special Committee may self-initiate a public statement if two-thirds of the participating members determine clear and convincing evidence of a violation exists.

Rule 6. Preliminary Dismissal of Complaints.

A complaint may be dismissed by the Chair without further review by the Special Committee if the complaint does not fall within the scope of the Special Committee's jurisdiction. The Chair will report any such action to the Special Committee within a reasonable time following the dismissal.

Rule 7. Requests for Advisory Opinions

Candidates are encouraged to seek opinions relating to the conduct of a campaign before such conduct occurs, and may request opinions as to the propriety of any act or conduct or the construction or application of the Code of Judicial Conduct. All written requests for advisory opinions shall be immediately forwarded to the Chair and general counsel. If the Chair determines the question has previously been answered by the Special Committee, staff shall inform the questioner of the resolution of the question and provide a copy of the formal opinion addressing the issue. In all other cases, counsel will prepare a memorandum discussing the request and make a recommendation that will be forwarded to the Special Committee along with the written request.

Rule 8. Complaints.

When the Special Committee receives a complaint or otherwise receives information indicating a violation of the Code of Judicial Conduct they will:

- a) Contact the complainant and/or subject of the complaint and gather such information deemed necessary to act on the complaint.
- b) Immediately provide the subject of the complaint notice and an opportunity to respond in a manner specified by the Special Committee.
- c) Conduct any additional investigation the Special Committee deems necessary.
- d) The Special Committee shall act on all complaints within five days after receipt. Such response may be either in person, by fax, US mail, e-mail or telephone as the Special Committee determines appropriate.

All proceedings shall be informal and non-adversarial. If the Special Committee determines the complaint does not warrant intervention it shall dismiss the complaint and notify all parties.

All complaints shall be confidential until the Special Committee, by a two-thirds vote of the participating members, determines by clear and convincing evidence that a violation has occurred.

Rule 9. Special Committee Action.

All action taken by the Special Committee is by a majority of the participating members unless otherwise specifically indicated. A participating member includes those appearing by telephone, video conference, in person, voting by e-mail, or otherwise having previously cast their vote in advance of a Special Committee meeting.

1. Advisory Opinion

- a. The Special Committee may determine the question presented is of limited significance and issue an informal opinion responding to the questioner only.
- b. The Special Committee may determine the question presented is of general interest and importance and issue a formal opinion. The formal opinion will be sent to all candidates, the Judicial Qualifications Commission and the Disciplinary Board of the State Bar Association in either complete or synopsis form as deemed appropriate, published in the bar newsletter, sent to appropriate media outlets, and filed with the Supreme Court. The formal opinion may be published in complete or synopsis form. Except for the Special Committee's response to the questioner, formal opinions shall be redacted to the extent practicable so as not to identify the questioner.
- c. The Special Committee may determine it is inadvisable to respond to the request for an advisory opinion and may decline in writing to the questioner stating its reasoning.
- d. Both formal and informal opinions shall be advisory only. However, the Judicial Qualifications Commission and the Disciplinary Board of the State Bar Association shall consider reliance by a judicial candidate upon the Special Committee's opinion.

2. Complaints.

- a. If two-thirds of the participating members determine there is clear and convincing evidence of a violation of the Code of Judicial Conduct, the Special Committee may issue a public statement about the campaign conduct.

Any formal statement by the Special Committee shall be signed by the Chair or Vice-Chair on behalf of the Special Committee.

Rule 10. Meetings.

The Special Committee may schedule meetings at such times and places as it deems convenient and appropriate. Committee members may attend such meetings in person, by telephone, or video conference.

Rule 11. Referral to Judicial Qualifications Commission and Disciplinary Board of the State Bar Association.

The Special Committee has the right, as any citizen would, of referring matters to the Judicial Qualifications Commission and the Disciplinary Board of the State Bar Association. An affirmative vote of a majority of the participating Special Committee members shall be required to refer any such matter.

Rule 12. Confidentiality.

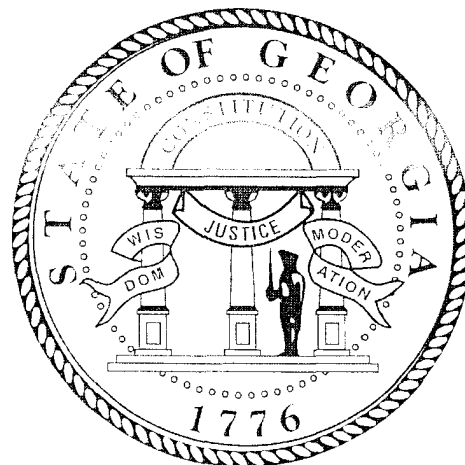
A formal opinion issued in response to a request for an advisory opinion shall be redacted to ensure the confidentiality of the questioner to the extent practicable. Complaints shall be confidential until such time as the Special Committee by a vote of at least two-thirds of its participating members has determined clear and convincing evidence exists that a violation has occurred. Special Committee investigatory and deliberation materials shall remain confidential.

Rule 13. Conflicts of Interest.

Special Committee members shall not participate in any matter in which they have either a material pecuniary interest that would be affected by a proposed advisory opinion or committee recommendation, or any other conflict of interest which prevents them from being fair and impartial. In assessing a conflict of interest, members of the Special Committee should refer to the Code of Judicial Conduct for guidance. However, no action of the Special Committee will be invalid where full disclosure of a potential conflict of interest has been made and the Special Committee has decided that the member's participation was not improper.

Rule 14. Final Report.

Upon the conclusion of the election the Special Committee shall distribute to the Judicial Qualifications Commission and the Disciplinary Board of the State Bar Association copies of all complaints and all proceedings relating thereto with a final report from the Special Committee.



Code of Judicial Conduct
Rules of the Judicial
Qualifications Commission

PROMULGATED JANUARY 7, 2004

PRINTED 06-05

Exhibit "C"

**Rules of the Judicial
Qualifications Commission**

The Constitution of the State of Georgia of 1983 provides that "The Supreme Court shall adopt rules of implementation" for discipline, removal, and involuntary retirement of judges (OCGA Article VI, Section VII, Paragraph VII). The following are rules adopted by the Supreme Court governing the functions of the Judicial Qualifications Commission:

Definition of Sanctions

The following working definition for disciplinary sanctions shall apply in all proceedings of the Commission, both formal and informal:

(a) Admonition: A private communication reminding a judge of ethical responsibilities and giving a gentle or friendly warning to avoid future misconduct or inappropriate practices. An admonition may be used to give authoritative advice and encouragement or to express disapproval of behavior that suggests the appearance of impropriety even though it meets minimum standards of judicial conduct.

(b) Private Reprimand: A private communication that declares a judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to merit a public sanction.

(c) Public Reprimand: A public communication administered by a judicial officer which declares a judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to warrant a censure.

(d) Censure: A public declaration by the Supreme Court that a judge is guilty of misconduct that does not require removal from office.

(e) Suspension: A decision by the Supreme Court to suspend a judge from office temporarily, with or without pay, for serious misconduct that merits more than a censure but less than removal. This sanction is flexible, and there are no restrictions on the length of a suspension.

(f) Removal: A decision by the Supreme court to remove a judge permanently from office for serious misconduct.

(g) Retirement: A decision by the Supreme Court to retire a judge for a disability that seriously interferes with the performance of judicial duties that is or is likely to become permanent.

Rule 1
Members and Their Terms

(a) The power to discipline, remove and cause involuntary retirement of judges is vested in the Judicial Qualifications Commission, which consists of seven members, as follows:

- (1) Two judges of any court of record selected by the Supreme Court;
- (2) Three members of the State Bar of Georgia, who have been active status members of the State Bar for at least ten years, and who shall be elected by the Board of Governors of the State Bar; and
- (3) Two citizens, neither of whom shall be members of the State Bar, who shall be appointed by the Governor (Article VI, Section VII, Paragraph VI. Constitution of Georgia of 1983).

(b) All members of the Commission shall serve for terms of four years each and until their successors are elected or appointed and are qualified. Whenever any member ceases to hold the office or to possess the qualifications which entitle the member to be appointed a member, the member's membership shall terminate, and the appointing authority shall select a successor for the unexpired term. No member of the Commission shall receive any compensation for services, but shall be allowed necessary expenses for travel, board and lodging incurred in the performance of Commission duties. No member of the Commission, except judges, shall hold any other public office or be eligible for appointment to a State judicial office while holding membership on the Commission. No member shall hold office in any political party or organization. No act of the Commission shall be valid unless concurred in by a majority of its membership.

(c) A vacancy shall occur when a Commission member becomes unable to continue service for any reason. An appointment to fill a vacancy for the duration of the unexpired term shall be made by the appropriate authority. If a vacancy is not filled at the end of sixty (60) days, the Commission shall appoint from the category to be represented a member who shall serve until such time as an appointment shall be made by the appropriate authority.

(d) A temporary vacancy shall occur when a Commission member becomes unable to attend a formal hearing for any reason. The Commission is authorized but not required to appoint a former member from the category to substitute at such formal hearing and subsequent action related to the hearing in lieu of such non-serving member.

Rule 2
Officers and Their Duties

(a) The Commission shall select from its members a Chairperson, a Vice Chairperson, and such other officers as the Commission may consider proper and helpful in carrying out its functions, who shall serve at the pleasure of the Commission. A member may be elected to more than one office.

(b) The Chairperson shall preside at all general meetings of the Commission as well as at formal hearings concerning the conduct or disability of a judge. If the Chairperson is not a lawyer, the Chairperson shall appoint a member of the Commission who is a lawyer to preside at any hearing held by the Commission. The Chairperson shall be responsible for the custody and safekeeping of all the records of the Commission, shall promptly furnish to members of the Commission copies of all complaints, notices, answers and other documents filed in connection with proceedings before the Commission, and shall perform such other duties as are indicated in these rules or as are customarily performed by a Chairperson. The Chairperson shall also annually make a report to the Supreme Court of the actions of the Commission, but shall not set forth therein 25
Promulgated January 7, 2004 • Printed 06-05 Rule 3 Meetings the name of or otherwise identify a judge with respect to matters which are confidential under the provisions of Rule 20.

(c) In the event the Chairperson is absent, or is otherwise unable to attend a meeting or to perform the duties of office at a particular time, those duties shall be performed by the Vice Chairperson, and in the absence of the Vice Chairperson, by a member of the Commission designated by those present.

(d) The Director or, if the Director is absent, such member of the Commission as the Chairperson shall designate, shall have the duty of recording in the minute book, as a permanent record of the Commission, the action of the Commission at each meeting.

(e) The Commission may, at its discretion, designate a Director who shall serve at the pleasure of the Commission and shall have such duties, powers and authority as may be, from time to time, fixed, determined or delegated by the Commission. The Director may be authorized by the Commission to issue subpoenas on its behalf.

(f) Notwithstanding the foregoing provisions, the Chairperson, with the concurrence of a majority of the Commission, may at any time designate any judicial member of the Commission to preside at any formal hearing held by the Commission. Any such designation shall be made by written order signed by the Chairperson or the Director.

- Rule 3**
Meetings
- (a) The Chairperson may, and upon the request of three members shall, call a meeting of the Commission. The Chairperson shall give reasonable notice to each member by telephone or other means of the time and place of the meeting.
 - (b) Decisions by the Commission to conduct an investigation of a judge, order a judge to submit to a physical examination, proceed against a person for contempt for failing to respond to a subpoena of the Commission, issue a public statement, institute contempt proceedings against a person for violation of the confidentiality provisions of the rules, hold or not to hold a formal hearing, hear additional evidence, make a report to the Supreme Court recommending removal, other discipline or retirement of a judge, or deciding after a formal hearing not to make such a report, shall be made at a formal meeting of the Commission. Decisions with respect to other matters may be arrived at through communications between the members of the Commission, but a report of such action shall be made by the Chairperson at the next meeting of the Commission and entered in the minutes of that meeting.
 - (c) Four members of the Commission shall constitute a quorum for the transaction of business at any formal meeting or for the conduct of a formal hearing, and if a quorum is present at a meeting, the vote of a majority of those in attendance shall be considered the official action of the Commission, except that a vote of a majority of the members of the Commission shall be required for a recommendation of discipline to the Supreme Court.

Rule 4
Complaints - Investigations

(a) The Commission shall require that all complaints shall be made to it in writing and the Commission, when it considers it appropriate, may require that the same be verified. A complaint shall not be a prerequisite to action by the Commission, but the Commission may act on its own motion in those cases where the Commission considers it appropriate.

(b) Upon receiving a complaint or otherwise receiving information indicating that a judge may have been guilty of willful misconduct in office, or willful and persistent failure to perform the duties of a judge, or habitual intemperance, or conduct prejudicial to the administration of justice which brings the judicial office into disrepute, or that a judge may have a disability that seriously interferes with the performance of the judge's duties which is or is likely to become permanent, the Commission may make an initial inquiry of the judge for such written comments with respect to the matters involved as the judge may wish to make; and, with or without making such initial inquiry, and with or without notice or other information being given to the judge, as the Commission may consider best, the Commission may conduct an investigation of the conduct or condition of the judge for the purpose of determining whether formal proceedings should be instituted and a hearing held. However, prior to any determination that a formal hearing will be held, the judge shall be sent a copy of the complaint or a synopsis of the matters to be or which have been investigated and the judge shall thereafter be given reasonable opportunity to make such statement to the Commission as the judge considers desirable. Such statement may be made, as the judge may elect, personally or by counsel, verbally or in writing, and may or may not be under oath. In exercising this right, the judge shall not have the right to call witnesses nor to confront nor cross-examine the person making the complaint or any person interviewed by the Commission or its duly authorized representative. If, after being notified by the Commission, the judge does not respond within a reasonable time or within the time fixed by the Commission, the right to make such statement shall thereupon terminate. In making an investigation, the Commission may issue subpoenas for witnesses to appear before the Commission's representative for the purpose of making a sworn statement and may likewise issue subpoenas for the production of books, papers and other evidentiary matters which are pertinent to the inquiry.

(c) Whenever the Commission reaches the conclusion that a complaint fails to state, or the facts developed upon an initial inquiry to the judge or an investigation fail to show, any reason for the institution of disciplinary proceedings, the Commission shall so advise the complainant. The Commission shall also so notify the judge, except that with respect to complaints which are rejected because they fail to state any grounds for disciplinary proceedings, the Commission may, but is not required to, advise the judge thereof.

(d) After receipt of a complaint or of information indicating that a judge may have been guilty of conduct which might warrant discipline, or that a judge may be disabled, the Commission, before voting to hold a formal hearing, may delegate to one or more of its members the authority and responsibility to personally and confidentially confer with the judge subject to the inquiry, and to make informal recommendations to the judge concerning the subject matter of the inquiry and a satisfactory disposition thereof; and if the judge agrees to the Commission's suggested disposition, the matter may be disposed of on the basis of the agreement reached. The Commission shall file a report of the disposition in the Supreme Court.

(e) The foregoing shall not be construed to mean that the Commission may not at any time entertain and act upon a proposal from a judge for

disposition of any matter pending before the Commission concerning such a judge, provided that if such proposal is made after notice of formal hearing, and is found acceptable to the Commission, a report thereof shall be filed in the Supreme Court and such report shall not be considered confidential.

(f) At any time after receipt of a complaint or otherwise receiving information indicating that a judge may have been guilty of conduct which, while insufficient to warrant the institution of formal proceedings, nevertheless warrants sanctions, the Commission may informally: (i) admonish and/or reprimand a judge; (ii) direct professional counseling and assistance for a judge; (iii) impose conditions on a judge's future conduct or instruct a judge to make specific changes in particular matters of conduct; or (iv) adjust the complaint by any other appropriate means consistent with these rules.

Rule 5
Institution of Formal
Proceedings - Notice -
Judge's Answer

(a) When after receiving a complaint or otherwise obtaining information concerning the conduct or physical or mental condition of a judge, the Commission has made such investigation of the complaint or information as the Commission considers needful and proper, and the judge has been given the opportunity to make a statement to the Commission as stated in Rule 4(b), the Commission concludes that a formal hearing should be held, the Commission shall issue, as promptly as possible, a written notice to the judge advising the judge of the institution of formal proceedings to inquire into the charges against the judge. The proceedings shall be entitled: "Before the Commission on Judicial Qualifications, Inquiry Concerning Judge _____."

(b) The notice shall specify the charges against the judge with sufficient fullness to enable the judge to understand the nature thereof and shall advise the judge of the right to file a written answer to the charges; and a copy of such notice shall be filed in the Supreme Court.

(c) Within thirty (30) days after service of the notice of formal proceedings, the judge shall file with the Commission an original and six (6) copies of a verified answer. The notice of formal proceedings and the answer shall constitute the pleadings. No further pleadings shall be filed, except by way of amendment as provided for in Rule 9.

<p>Hearing Before Commission or a Special Master</p>	<p>Rule 6 Upon the filing of an answer or upon expiration of the time for its filing, the Commission shall promptly order a hearing to be held before it concerning the removal, other discipline or retirement of the judge, or the Commission may request the Supreme Court to appoint a Special Master to hear and take evidence in such matter and to report thereon to the Commission. The Commission shall set a time and place for the hearing, and shall give notice thereof to the judge at least twenty (20) days before the date thereof.</p>
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Rule 7 Conduct of Hearing	<p>(a) At the time and place set for the hearing, the Commission or the Special Master may proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.</p> <p>(b) The proceedings at the hearing shall be reported by a qualified reporter.</p> <p>(c) At the hearing before the Commission or a Special Master appointed by the Supreme Court, legal evidence only shall be received, and oral evidence shall be taken on oath or affirmation.</p> <p>(d) The Chairperson or presiding member of the Commission, if the hearing is held before the Commission, or the Special Master appointed to conduct the hearing, shall administer oaths or affirmations to witnesses, rule on the admissibility of evidence, and otherwise direct the manner or order of proceedings as a judge of a court of record.</p> <p>(e) The Rules of Evidence applicable to civil cases shall apply at all hearings before the Commission or the Special Master, and the standard of proof shall be clear and convincing evidence. In all such hearings, the burden of proof shall be upon the counsel for the Commission. 29</p>
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Rule 8
Rights of Judge in Connection
with Hearing

(a) Within fifteen (15) days after such notice of formal hearing has been mailed to or otherwise served upon the judge, it shall be the duty of the Commission to furnish to the judge as of the time of such notice the names of all persons and their addresses who have been interviewed by the Commission or its representative in investigating the charges set out in the notice of a formal hearing, as well as a copy or transcript of all statements of testimony, whether signed or unsigned, of any person so interviewed in connection with such charges and copies of all documents, writings, papers, records or other evidentiary material relevant to such charges which have been obtained by the Commission or its representative and reviewed by the Commission.

(b) If, after furnishing such information and prior to the date of the hearing, the Commission or its representative shall interview any other person or persons in connection with such charges, the Commission shall promptly inform the judge or the judge's counsel of the name and address of such other person or persons.

(c) If a witness is discovered or interviewed or any documentary or other tangible evidence is discovered or comes into the possession of the Commission or its representative after the hearing has begun, the Commission shall promptly inform the judge or the judge's counsel of the name and address of such witness and promptly furnish a copy of such documentary or other tangible evidence to the judge or the judge's counsel.

(d) The foregoing provisions shall not be construed as requiring that the Commission furnish to the judge any communications between members of the Commission or its representative or any other records of the Commission.

(e) In either of the situations described in Paragraphs (b) and (c), the Commission, upon compliance with the requirements of such paragraphs, shall be authorized to hear the testimony of any such witness or to admit into evidence any documentary or tangible evidence. However, the Commission may take such action with respect to the hearing either by way of postponement, recess or adjournment of the hearing to some future date as, upon a specific motion made by the judge therefore, may seem proper for the protection of the judge in the adequate presentation of a defense.

(f) At the hearing the judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence; to be represented by counsel; to examine and cross-examine witnesses; and to have subpoenas issued for attendance of witnesses to testify or for the production of books, papers and other evidentiary matters.

(g) When a transcript of testimony has been prepared at the expense of the Commission, a copy thereof, upon request, shall be available for use by the judge and counsel in connection with the proceedings, or the judge may arrange to procure a copy at his or her expense. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at the judge's expense.

(h) If, in a proceeding before the Commission, the Commission should be in doubt as to the competency of the judge, the Commission may appoint a guardian ad litem or take such other action as the Commission may consider appropriate.

Rule 9 Amendments to Notice and Answer	The Special Master, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or set forth additional facts and charges whether occurring before or after the commencement of the hearing. In case an amendment is allowed to the notice of formal hearing, the judge shall be given reasonable time both to answer the amendment and to prepare and present a defense against the matters set forth therein.
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- Rule 10**
- Report of Special Master**
- (a) Within twenty (20) days after the conclusion of a hearing before a Special Master and the Master's receipt of a transcript of the evidence, the Special Master shall prepare and transmit to the Commission a report which shall contain a brief statement of the proceedings, findings of fact, any conclusions of law with respect to the issues presented by the notice of formal hearing and the answer thereto, or if there be no answer, findings of fact and any conclusions of law with respect to the allegations in the notice of formal hearing. The report shall also contain the Special Master's recommendation as to whether the Commission shall or shall not recommend discipline. The report shall be accompanied by a transcript of the evidence.
- (b) Upon receiving the report of the Special Master, the Commission shall promptly serve a copy on the judge.

Rule 11
Objections and Briefs

- (a) Within fifteen (15) days after a copy of the Special Master's report is served on the judge, the judge may file with the Commission an original and six (6) copies of a statement of objections to the findings of fact and conclusions of law contained in the report of the Special Master and may file an original and six (6) copies of a brief in support thereof.
- (b) If the judge does not contest the findings of fact or conclusions of law as set forth in the Special Master's report, the judge may, nevertheless, within such time file an original and six (6) copies of a brief in support of a claim that such findings and conclusions are not sufficient to justify removal, other discipline or retirement.
- (c) In making a report, the Commission, when there is a report of a Special Master, may accept, modify or reject any or all of the findings of fact and conclusions of law of the Special Master as well as the Special Master's recommendation to the Commission that it recommend or not recommend discipline.
- (d) If a formal hearing is held by the Commission, the judge may, within a reasonable time after the termination of the hearing as may be fixed by the Commission, file an original and six (6) copies of a brief with the Commission in support of the judge's claim that the Commission should not recommend removal, other discipline or retirement.

Rule 12 Additional Evidence	<p>In a proceeding pending before it, the Commission may, at any time after a formal hearing is held, order an additional hearing for the taking of additional evidence; provided that where a Special Master has been appointed, additional evidence shall be taken by the Special Master upon his or her own motion or by order of the Commission, and no such hearing for the taking of additional evidence shall be held by the Commission itself until after the Special Master has made a report. After the Special Master has made a report, the Commission may take additional evidence, or direct the Special Master to do so and report findings of fact and conclusions of law with respect thereto. The judge shall be given ten (10) days notice of the hearing to take additional evidence.</p>
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<p>Rule 13</p> <p>Extensions of Time</p>	<p>The Chairperson of the Commission may extend for periods not to exceed thirty (30) days in the aggregate the time for filing an answer, for the commencement of a hearing before the Commission, for the transmittal of the Special Master's report to the Commission, and for filing a statement of objections to the report of the Special Master, and a Special Master may similarly extend the time for the commencement of a hearing. The Commission may grant such additional extension of time as it may consider proper.</p>
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Rule 14
Recommendation of
Commission of Removal,
Other Discipline or Retirement

(a) The Commission may make a report recommending to the Supreme Court that a judge be (1) removed from office; (2) removed from office and prohibited from thereafter holding judicial office; (3) suspended from office for a specified period of time together with such other conditions and restrictions as the Commission may consider proper; (4) censured; (5) reprimanded; (6) retired; or (7) subjected to such other discipline as may seem to the Commission appropriate. In the case of a recommendation of censure, the same, if approved by the Supreme Court, shall be administered in open Court. If the Commission recommends a reprimand and such recommendation is approved by the Court, the same shall be administered by the Court at such place and in such manner as the Court may consider proper.

(b) The report shall be signed by the members of the Commission concurring therein and shall indicate if any member or members dissent from the report. Any member who does not agree with the report of the majority of the Commission may file a written dissent or special concurrence which shall be made a part of the record. The report shall be filed in the Supreme Court and shall be accompanied by the Special Master's report, if any, and a transcript of the evidence. A copy of the report as filed shall be promptly served upon the judge and evidence of such service shall be filed in the Supreme Court.

Rule 15
Suspension by the
Commission for Felony
Indictment

(a) Upon indictment for a felony by a grand jury of this State or by a grand jury of the United States of any judge, the Commission shall, subject to subparagraph (b) of this Rule, review the indictment, and if it determines that the indictment relates to, and adversely affects the administration of the office of this indicted judge, and that the rights and interests of the public are adversely affected thereby, the Commission shall suspend the judge immediately and without further action pending the final disposition of the case or until the expiration of the judge's term of office, whichever occurs first. During the term of office to which such judge was elected and in which the indictment occurred, if a nolle prosequi is entered, if the public official is acquitted, or if after conviction the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the judge shall be immediately reinstated to the office from which he or she was suspended. While a judge is suspended under this subparagraph and until final conviction, the judge shall continue to receive compensation. For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that office shall be chosen as provided in the Constitution of the State of Georgia of 1983 or the laws enacted in pursuance thereof.

(b) The Commission shall not review the indictment for a period of fourteen (14) days from the day the indictment is received. This period of time may be extended by the Commission. During this period of time, the indicted judge may, in writing, authorize the Commission to suspend him or her from office. Any such voluntary suspension shall be subject to the same conditions for review, reinstatement or declaration of vacancy as are provided in this subparagraph for a nonvoluntary suspension.

(c) After any suspension is imposed under this subparagraph, the suspended judge may petition the Commission for a review. If the Commission determines that the judge should no longer be suspended, the judge shall immediately be reinstated to office.

(d) The findings and records of the Commission and the fact that the public official has or has not been suspended shall not be admissible in evidence in any court for any purpose. The finding and records of the Commission shall not be open to the public.

(e) The provisions of this subparagraph shall not apply to any indictment handed down prior to January 1, 1985.

(f) If a judge who is suspended from office under the provision of this subparagraph is not first tried at the next regular or special term following the indictment, the suspension shall be terminated and the judge shall be reinstated to office. The judge shall not be reinstated under this provision if he or she is not so tried based on a continuance granted upon a motion made only by the defendant.

Rule 16
Petition to Modify or Reject
Commission's
Recommendation

(a) A petition to the Supreme Court to modify or reject the recommendation of the Commission for removal, other discipline or retirement of a judge may be filed with six (6) copies within thirty (30) days after service of a copy of the Commission's report on the judge. The petition shall be verified, shall be based on the record, shall specify grounds relied on, and shall be accompanied by proof of service of seven (7) copies of the petition and of the brief on the Commission. Within twenty (20) days after service of the petition and brief, the Commission may serve and file a responsive brief. Within fifteen (15) days after service of such brief, the petitioner may file a reply brief, seven (7) copies of which shall be served on the Commission.

(b) Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the Commission.

(c) A petition filed under this rule shall be heard in such manner as may be ordered by the Supreme Court.

Rule 17
Commission's Power to
Secure Assistance

(a) In conducting investigations, the preparation of notices, presentation of evidence at a formal hearing, preparation and filing of briefs and other documents, or in otherwise carrying out its functions, the Commission may utilize the services of the Attorney General of this State or one of the Attorney General's deputies or assistants, and in addition thereto, or in lieu thereof, may secure and pay for the services of a member of the Bar of this State in any or all of such matters.

(b) The Commission may also employ such assistants as it considers necessary for the performance of the duties and in the exercise of the powers conferred upon the Commission; subpoena or arrange for and compensate medical or other experts and reporters; subpoena witnesses; and arrange for the attendance of witnesses not subject to subpoena; and pay from funds available to it all expenses reasonably necessary for effectuating the purposes of Article VI, Section VII, Paragraph VII, of the 1983 Constitution of the State of Georgia.

Rule 18

**Powers of Commission
Subpoenas, Depositions,
Contempt, Physical
Examinations, Witness Fees**

(a) The Commission, through its Chairperson or Director, shall have the power to issue subpoenas for the attendance of witnesses at a formal hearing held before the Commission or a Special Master under Rule 7, for the production at such hearing of books, papers and other evidentiary matter.

(b) After notice is given to a judge that a formal hearing will be held under Rule 5, either the Commission or the judge may take the depositions of any witness upon reasonable written notice thereof given to the judge or the Commission of the time and place of taking of such depositions. The original of the deposition shall be returned to the Commission and at the hearing may be opened and used by either party under the same conditions and in the same manner and for the same purposes as depositions in civil cases. In connection with the taking of such depositions, the Commission, through its Chairperson or Director, shall have the power to issue a subpoena for the attendance of the witness whose testimony is to be taken and for the production at the taking of the deposition of books, papers and other evidentiary matter.

(c) If any person refuses to attend, testify, or produce any writings or things required by a subpoena issued by the Commission, as authorized under subparagraph (b) of Rule 4 or under this rule, the Commission may petition the judge of the Superior Court of the circuit in which the person may be found, or if a judge of that circuit is involved in the proceedings, then to any judge of an adjoining circuit, for an order compelling the person to attend and testify or produce the writings or things required by the subpoena. The Court shall order the person to appear before it at a specified time and place and then and there shall consider why the person has not attended, testified or produced writings or things as required. A copy of said order shall be served upon the person to whom the subpoena of the Commission was directed. If it appears to the Court that the subpoena was regularly issued, the Court shall order the person to appear before the Commission, or a Special Master, at the time and place fixed in the order and to testify or produce the required writings or things. Failure to obey the order shall be punishable as contempt of court. The proceedings so instituted shall state in general terms, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and directions, if any, of the Commission requesting an order requiring the person to appear and testify and to produce writings or things as required by the Commission's subpoena. If the proceedings are instituted prior to the giving of notice of a formal hearing, the proceedings shall not identify the judge by name but only as a number.

(d) Each witness shall receive for attendance the same fees and allowances prescribed by OCGA Section 24-10-24 for witnesses in civil cases.

(e) The Commission shall also have the authority, after notice to the judge and a hearing, to require that a judge involved in proceedings before the Commission submit to a physical or mental examination, or both, and specify the time, place, manner, conditions and scope of the examination and the physician or physicians by whom it is to be made.

- Rule 19** |
- Notices** |
- (a) All notices provided for under these rules shall be in writing and shall be served upon the judge personally by a member of the Commission, or by a representative designated by the Chairperson, or may be served by registered or certified mail, return receipt requested.
 - (b) All notices provided for under these rules shall be in writing and shall be served upon the judge personally by a member of the Commission, or by a representative designated by the Chairperson, or may be served by registered or certified mail, return receipt requested.
 - (c) All notices mailed to a judge or counsel shall be enclosed in a sealed envelope marked on the face thereof, "Confidential - to be opened by addressee only."

Rule 20**Confidentiality and Exceptions**

(a) The proceedings of the Commission, including, but not limited to, the fact of filing of complaints with the Commission, investigations to determine whether there is probable cause that judicial misconduct has occurred, conferences of the Commission with respect to matters pending before it, correspondence and other communications, information learned from any investigation by the Commission and all other papers and documents shall be kept confidential. Information obtained independently of any such complaint or investigation need not be maintained as confidential. Further, the requirement that participants maintain confidentiality shall cease at the time of the decision of the Commission on whether to initiate formal hearing against a judge, or at the time the complaint in question is resolved, closed, or otherwise settled through formal disposition. However, this confidentiality requirement shall not apply to notice of a formal hearing, a formal hearing, reports of the Commission to the Supreme Court recommending discipline, and decisions of the Commission made after a formal hearing that the judge with respect to whom the hearing was held was not guilty of misconduct justifying a recommendation of discipline. When, notwithstanding the rule of confidentiality set out in the first sentence of this subparagraph, the existence of a complaint filed with the Commission or any investigation of a judge whether or not based upon a complaint shall in some way become public, the Commission, at the request of the judge or upon its own motion if it considers such to be desirable, may make such statement with respect to the handling and status of the proceedings as the Commission may consider appropriate. When, in the exercise of its functions, the Commission has information concerning conduct of a member of the Bar which the Commission feels should be considered by the Disciplinary Board of the State Bar of Georgia for the purpose of determining whether such conduct constitutes a violation of the Code of Professional Responsibility, the Commission shall have the authority and it shall be its duty to refer the matter to the Board for such action as the Board may consider appropriate. The Commission shall be further authorized, in its discretion, to disclose to the Judicial Nominating Commission of the State of Georgia and to the Governor of the State, or any Commission, Board or Committee officially appointed to evaluate nominees for federal judgeships, including, but not limited to, a committee appointed by the American Bar Association for such purpose, any information involving any prospective nominee for judicial appointment which the Commission feels such Commission, Board or Committee should consider in passing upon the qualifications and fitness of the nominee for judicial appointment.

(b) All persons acting for the Commission in investigating a judge or participating in an official capacity in any proceedings relating thereto, including court reporters, shall be specifically advised by the Chairperson or by the Commission's representative of the requirement of confidentiality with respect to such matters as are confidential under subparagraph (a) of this Rule and shall be directed not to disclose any information acquired by them to any person not officially or formally connected with the investigation or proceedings.

(c) All subpoenas and other proceedings which may be issued or conducted by the Commission prior to service of a notice of formal hearing shall not name the judge against whom the charges are pending, but shall style the proceedings by number as set out in Rule 5.

(d) If there shall be probable cause for inquiry concerning, or prosecution of, a witness for perjury in proceedings before the Commission, the record of the proceedings or papers filed in connection therewith shall be disclosed to the extent required by the inquiry or prosecution.

(e) A judge about whom an inquiry or investigation is being made may request release of information concerning the complaint and investigation, and the Commission, if it considers appropriate, may comply with such request.

(f) Any person violating the rule of confidentiality as set forth in this section shall be subject to punishment for contempt of the Supreme Court.

(g) The rule of confidentiality as set forth in this section shall not apply to any information which the Commission considers to be relevant to any current or future civil or criminal action against a judge, and upon receipt of a duly issued subpoena or court order by any state or federal court of record, the Commission is authorized to comply with the same to the extent required by such subpoena or court order.

(h) The rule of confidentiality set forth in this section shall not apply to any complaint alleging a violation of Canon 7 of the Code of Judicial Conduct which the Commission, in its sole discretion, determines should be handled on an expedited basis in manner set forth in Rule 27.

Rule 21	Complaints, reports or testimony in the course of proceedings under these rules shall be deemed to be made in the course of judicial proceedings.
Immunity	Members of the Commission, Commission counsel and the Commission staff shall be absolutely immune from suit for all conduct in the course of their official duties. All other participants shall be entitled to all rights, privileges and immunities afforded to participants in actions filed in the courts of this state, and shall be immune from civil liability with respect to all papers filed with, or statements made or testimony given to, the Commission or the Supreme Court or given in any investigation or proceeding pertaining to a complaint against a judge, when done in good faith.

Rule 22
Advisory Opinions

- (a) The Commission shall be authorized to render official formal advisory opinions concerning a proper interpretation of the Code of Judicial Conduct, which advisory opinions the Commission shall publish and disseminate.
- (b) The Commission shall examine and reconsider any of its advisory opinions upon the request of the Supreme Court.
- (c) The Commission and the Supreme Court shall consider compliance with an advisory opinion to be evidence of a good faith effort to comply with the Code of Judicial Conduct, but only to the extent that the underlying facts are identical.
- (d) The Supreme Court's determination of the propriety of particular conduct shall supersede any conflicting advisory opinion of the Commission.

Rule 23	The Commission shall have such other powers and authority as may be reasonably necessary for the proper and efficient performance of its
Other Powers	functions in carrying out the intent of the constitutional amendment creating the Commission.

Rule 24
Complaint Against a Member
of the Supreme Court

A complaint against a member of the Supreme Court shall proceed in the same manner as a complaint against any other judge except:

(a) If the Commission recommends a sanction and the respondent consents to the sanction, the Commission shall impose the sanction and there shall be no appeal or further review by the Court.

(b) If the Commission recommends a sanction and the respondent objects to the sanction, the Commission shall proceed in the manner outlined in Rule 14. However, all current members of the Court shall be automatically disqualified and a substitute Court consisting of the current Chairperson and the six (6) immediate past Chairpersons of the Council of Superior Court Judges shall be impaneled to decide the matter in lieu of the sitting members of the Supreme Court. If any such Chairperson shall be disqualified or otherwise fails or refuses to serve, the next preceding Chairperson of the Council shall serve as a member of the substitute Court.

Rule 25
Emergency Interim Relief

- (a) Incident to any preliminary investigation or formal proceeding conducted pursuant to these rules or upon receipt of sufficient evidence demonstrating that the continued service of any judge is causing immediate and substantial public harm and an erosion of public confidence in the orderly administration of justice and appears to be violative of the Georgia Code of Judicial Conduct, the Commission may petition the Supreme Court for injunctive or other relief, including temporary suspension or reassignment of the judge.
- (b) The petition shall state the evidence justifying the emergency relief sought with particularity and shall be verified by the Chairperson and/or the Director of the Commission.
- (c) Simultaneously with the filing of said petition, a copy shall be personally served upon the Respondent by any person approved by the Chairperson and/or the Director of the Commission. In the event personal service cannot be perfected, service may be perfected by registered or certified mail, return receipt requested, to the last known address of the Respondent as set forth in the most current issue of the Georgia Courts Directory published by the Administrative Office of the Courts.
- (d) A written acknowledgment of service from the Respondent and/or his or her counsel shall constitute conclusive proof of service and eliminate the need to utilize any other form of service.
- (e) Upon receipt of the verified petition for emergency relief, the Clerk of the Supreme Court shall immediately file the same; assign the matter a docket number; and notify the Chief Justice that the appointment of a Special Master is appropriate. Within 10 days after the docketing of said petition, the Court shall appoint a Special Master to conduct a hearing at which the Commission shall show cause why the relief sought by the Commission should be granted pending further disciplinary proceedings.
- (f) Within 10 days after receipt of the Order of Appointment, the Special Master shall conduct a hearing at such time and place as may be designated by said Special Master or as may be mutually agreed upon by the parties.
- (g) Within 10 days following the completion of said hearing, the Special Master shall file a report and recommendation with the Clerk of the Supreme Court and simultaneously serve copies thereof upon the Commission and the Respondent.
- (h) The Supreme Court shall give expedited consideration to the report of the Special Master and may suspend the Respondent, with or without pay, pending final disposition of the disciplinary proceedings giving rise to the petition for emergency suspension or order such other action as it deems appropriate under all the circumstances.

Rule 26
Involuntary Retirement of
Judges

In addition to other methods and causes provided in these Rules, a judge of any court in this State shall be subject to involuntary retirement for a mental or physical disability which constitutes a serious and likely permanent interference with the performance of the duties of office on the following terms and conditions:

(a) Upon receiving a complaint or otherwise receiving information indicating that a judge has been judicially declared incompetent; voluntarily committed by reason of incompetency or disability by a final judicial order after a judicial hearing; or may have a mental or physical disability that seriously impairs or interferes with the performance of the duties of office which is or is likely to become permanent, and after determining that said condition adversely affects the administration of the office of the disabled judge and the rights and interests of the public, the Commission shall, without further action, enter an order requiring the judge to show cause, within 10 days after service of said order, why said disabled judge should not be temporarily transferred to a disability inactive status pending the final disposition of the matter. A copy of said order shall be immediately served by hand delivery upon the judge, his or her guardian, or the director of the institution in which any such judge may be confined or otherwise receiving treatment.

Unless subsequently extended by consent, any such order shall automatically expire 90 calendar days after service upon the disabled judge, and during such time, said disabled judge shall continue to receive the compensation normally paid for such office.

(b) Simultaneously with the service of said order, the Commission shall request the judge to submit, within 10 days, all pertinent medical and other records to the Commission and shall designate one or more qualified medical, psychiatric or psychological experts to examine the disabled judge prior to any hearing on the matter. Said experts may or may not be agreed upon by the Commission and the disabled judge, but in any event, the written reports of all such experts shall be provided to the Commission and to the disabled judge as soon as medically feasible, and in any event, not less than 20 days prior to any hearing on the matter. The cost of any such examinations shall be borne solely by the Commission.

(c) The failure or refusal of a judge to submit the requested medical records or to submit to an independent medical examination, unless due to circumstances beyond the judge's control, shall preclude the judge from submitting reports of medical examinations done on his or her behalf, and the Commission may consider such failure or refusal as evidence that the judge has a disability.

(d) In the event the disabled judge shall desire independent medical examinations by experts other than those designated by the Commission, said judge shall have the absolute right to have such examinations conducted, provided, however, that any such examination shall be at the sole expense of the disabled judge and, provided further, that written reports of such examinations are provided to the Commission as soon as medically feasible and, in any event, not less than 20 days prior to any hearing on the matter.

(e) After receipt and review of the written reports of any and all such examinations and prior to any hearing on the matter, the Commission and the disabled judge may agree upon a proposed stipulated disposition of the matter. Said proposed stipulated disposition, which shall contain, as appropriate, (i) findings of fact, conclusions of law and recommended final disposition; (ii) copies of the original complaint or other material giving rise to the complaint; and (iii) all written reports of examinations received and

reviewed by the Commission, shall be immediately filed with the Supreme Court for approval, rejection or modification. In such filing, the disabled judge shall not be identified, but the matter shall be captioned: "Stipulated Disposition Concerning Judge No. _____."

(f) The final decision on such stipulated disposition shall be made by the Supreme Court as soon as practicable, but in any event, not later than thirty (30) days after the matter is docketed in said Court, and the Court shall forthwith enter an appropriate order.

(g) In the event the proposed stipulated disposition is rejected and/or modified or revised in any substantial and material way, the disabled judge may, within ten (10) days of the receipt of the order of the Court, notify the Commission that he or she is withdrawing his or her agreement to the same, and said proposed stipulated disposition cannot thereafter be used against said disabled judge in any subsequent proceedings, nor shall the same be available for public inspection.

(h) If any such matter is not resolved by stipulated disposition, all such subsequent proceedings shall be conducted in the same manner as disciplinary proceedings, except:

(1) All such proceedings shall be and remain confidential until the final order of the Supreme Court;

(2) The Commission may appoint and compensate, if necessary, a lawyer to represent the disabled judge if the judge is without representation;

(3) If, after a formal hearing, the Commission concludes that the judge is incapacitated to continue to hold judicial office by reason of either physical or mental disability, it shall not be empowered to recommend any disciplinary action against said judge, but rather shall be limited to recommending a suspension from office, either temporary or permanent, on such terms and conditions as may appear just and proper under the circumstances, until such time as an appropriate petition for reinstatement to active status has been filed by the disabled judge and granted by the Supreme Court.

(4) For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge who shall serve until the disabled judge is reinstated to active status or until the expiration of the disabled judge's term of office, whichever first occurs.

Rule 27
Special Committee on
Judicial Election Campaign
Intervention

(a) In every year in which a general election is held in this State and at such other times as the Commission may deem appropriate, the Chair shall name three (3) members to a Special Committee on Judicial Election Campaign Intervention ("Special Committee") whose responsibility shall be to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office. The membership of such committee shall consist of the senior member of each of the three (3) categories of Commission membership if available, and if not, the next most senior member from that category. The Commission Director shall also serve as an ex-officio member. The objective of such committee shall be to alleviate unethical and unfair campaign practices in judicial elections, and to that end, the Special Committee shall have the following authority:

(b) Upon receipt of a complaint or otherwise receiving information facially indicating a violation by a judicial candidate of any provision of Canon 7 during the course of a campaign for judicial office, the Director shall immediately forward a copy of the same by facsimile and U.S. Mail to the Special Committee members and said Committee shall:

- (1) seek, from the complainant and/or subject of the complaint, such further information on the allegation of the complaint as it deems necessary;
- (2) conduct such additional investigations as the Committee may deem necessary;
- (3) determine whether the allegations of the complaint warrant speedy intervention; if no intervention is needed, dismiss the complaint and so notify the complaining party;
- (4) if further investigation is deemed necessary, request confidential written responses from the subject of the complaint and the complaining party on the following schedule:
 - (A) within 3 business days of receiving such a request from the Committee, a written response from the subject of the complaint;
 - (B) the Committee will share the subject's written response with the complaining party on a confidential basis, who shall be requested to provide a written response within 3 business days; and
 - (C) the Committee will share the complaining party's response with the subject of the complaint, who then shall be requested to submit a written rebuttal within 1 business day.

In the event a complaint is filed within two (2) weeks before a judicial election, or if circumstances otherwise dictate, the Committee may accelerate the above schedule or eliminate the need for steps (B) and (C) as the Committee deems necessary. Each of the above papers must be served on the Committee only, and will be kept confidential except as described above. The identity of the complaining party will remain confidential until the Committee's decision is communicated to the parties unless that confidentiality is waived by the complaining party. Any party breaching the confidentiality of the above process shall be subject to a Public Statement as set forth in this Rule.

(5) if it is determined after the papers from the parties are reviewed that the allegations do warrant intervention, the Committee is authorized:

Rule 28
Recusal of Commission
Members

Commission Members shall recuse themselves in any proceeding in which their impartiality might reasonably be questioned, including, but not limited to instances where:

(a) the member is a party, or witness, or has a personal familial or financial relationship or interest involving the matter, any party or witness;

(b) the member is an attorney or party in any matter pending before the respondent;

(c) the member has personal knowledge or information which could interfere with that member impartially considering such matter;

(d) the member, as a judge similarly situated, would be required to recuse under the Code of Judicial Conduct; or

(e) the member believes that for any reason, that member cannot render a fair and impartial decision.

If the propriety of a member's participation is raised, the issue shall be decided by a majority of the members present and voting. Temporary appointments to replace disqualified members, when necessary, shall be made in the same manner as authorized in Rule 1(d).

(A) to immediately release to the complaining party and the person and/or organization complained against, a non-confidential "Public Statement" setting out violations believed to exist; and/or

(B) to refer the matter to the full Commission for such action as may be appropriate under the applicable rules.

(6) if it is determined after the papers from the parties are reviewed that the allegations do not warrant intervention, the Committee shall dismiss the complaint and so notify the complaining party and the subject of the complaint

(c) All proceedings under this Rule shall be informal and nonadversarial, and the Special Committee shall act on all complaints within ten (10) days of receipt, either in person; by facsimile; by U.S. Mail; or by teleconference.

(d) Except as hereinabove specifically authorized, the proceedings of the Special Committee shall remain confidential as provided in Rule 20, and in no event, shall the Committee have the authority to institute disciplinary action against any candidate for judicial office, which power is specifically reserved to the full Commission under applicable rules.